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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

DENNY LAKE (also d/b/a JD United,
U.S. Crush, Advocacy Department,
Advocacy Division, Advocacy
Program, and Advocacy Agency);
CHAD CALDARONELLO (a/k/a
Chad Carlson and Chad Johnson),
individually and as an officer of C.C.
Enterprises, Inc.; C.C.
ENTERPRISES, INC. (also d/b/a
HOPE Services, Trust Payment
Center, and Retention Divisions);
DEREK NELSON (a/k/a Dereck
Wilson), individually and as an officer
of D.N. Marketing, Inc.; D.N.
MARKETING, INC. (also d/b/a
HAMP Services and Trial Payment
Processing); BRIAN PACIOS (a/k/a
Brian Barry and Brian Kelly); JUSTIN
MOREIRA (a/k/a Justin Mason, Justin
King, and Justin Smith),

Defendants, and
CORTNEY GONSALVES,
Relief Defendant.

FILED

APR 14, 2015

CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY MKU
Deputy Clerk, U.S. District Court

UNDER SEAL

Case No. SACV 15-00585-CJC (JPRx)

**RULE 65(b)(1) CERTIFICATION
OF JONATHAN COHEN IN
SUPPORT OF *EX PARTE* MOTION
FOR A TEMPORARY
RESTRAINING ORDER, ASSET
FREEZE, APPOINTMENT OF A
TEMPORARY RECEIVER, AND
ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

[LODGED UNDER SEAL]

1 In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that
2 the following is true and correct:

3 (1) I am counsel for Plaintiff Federal Trade Commission (“FTC”) in the
4 above-captioned action, and I have personal knowledge of the matters contained
5 herein. I submit this certification pursuant to Fed. R. Civ. P. 65(b)(1) in support of
6 the FTC’s *Ex Parte* Motion for a Temporary Restraining Order (“TRO”), Asset
7 Freeze, the Appointment of a Temporary Receiver, and Related Relief (“*Ex Parte*
8 Motion”).

9 (2) In accordance with Fed. R. Civ. P. 65(b)(1)(A)-(B), I certify that the
10 FTC has not provided notice to Defendants¹ regarding the *Ex Parte* Motion
11 because, as explained herein and in the FTC’s supporting Memorandum, providing
12 Defendants with notice would defeat the purpose of the *Ex Parte* Motion and cause
13 consumers to suffer immediate and irreparable harm.

14 (3) The specific facts supporting the FTC’s *Ex Parte* Motion demonstrate
15 (i) that the FTC is likely to prevail against Defendants and (ii) the balance of the
16 equities supports the requested relief.

17 (4) As the accompanying Memorandum describes more fully, the HOPE
18 Defendants purport to help distressed homeowners obtain loan modifications
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21 ¹ I refer to Denny Lake (also d/b/a JD United, U.S. Crush, Advocacy
22 Department, Advocacy Division, Advocacy Program, and Advocacy Agency);
23 Chad Caldaronello (a/k/a Chad Carlson and Chad Johnson), individually and as an
24 officer of C.C. Enterprises, Inc.; C.C. Enterprises, Inc. (also d/b/a HOPE Services,
25 Trust Payment Center, and Retention Divisions); Derek Nelson (a/k/a Dereck
26 Wilson), individually and as an officer of D.N. Marketing, Inc.; D.N. Marketing,
27 Inc. (also d/b/a HAMP Services and Trial Payment Processing); Brian Pacios
28 (a/k/a Brian Barry and Brian Kelly); Justin Moreira (a/k/a Justin Mason, Justin
King, and Justin Smith), and Cortney Gonsalves collectively as “Defendants.” I
refer to all defendants other than Lake and Gonsalves as “the HOPE Defendants.”

1 through government agencies. Specifically, after a *faux* “underwriting” process,
2 the HOPE Defendants report to homeowners that they are approved for a loan
3 modification if they make three monthly trial mortgage payments (often along with
4 a “reinstatement fee”) into their lender’s trust account.

5 (5) The FTC is likely to prevail against the HOPE Defendants because the
6 evidence establishes that the HOPE Defendants steal these payments:

7 i. The FTC conducted a substantial undercover investigation in
8 which an FTC investigator posed as the wife of a distressed homeowner facing
9 foreclosure. The undercover investigation shows that the HOPE Defendants
10 marketed loan modification services to an apparent homeowner, promised a
11 modification, and cashed the homeowner’s payment—notwithstanding the fact that
12 the homeowner does not exist, the loan is fake, the mortgaged property is an empty
13 field, and the financial documents the homeowner sent as part of the
14 “underwriting” process are all fabrications. Thus, the undercover investigation
15 establishes that the HOPE Defendants collect money ostensibly for loan
16 modifications, but they do not provide loan modifications. Put more bluntly, the
17 undercover investigation establishes that the HOPE Defendants steal homeowners’
18 payments.

19 ii. Sworn testimony from homeowners and their lenders
20 establishes that the homeowners sent trial mortgage payments to the HOPE
21 Defendants, but their lenders never received these payments.

22 iii. A forensic accounting establishes that the HOPE Defendants
23 received approximately \$1.9 million in homeowners payments, but they did not
24 transfer this money to lenders.

25 iv. The HOPE Defendants purport to obtain modifications through
26 three alleged government “agencies”—Making Home Affordable (“MHA”), the
27 Department of Housing and Urban Development (“HUD”), and the Neighborhood
28

1 Assistance Corporation (“NACA”). However, sworn testimony from the United
2 States Treasury Department, HUD, and NACA establishes, among other things:

- 3 (a) MHA is a website, not a government agency;
- 4 (b) NACA is not a government agency;
- 5 (c) Treasury, HUD and NACA do not routinely receive loan
6 modification applications from third parties such as the HOPE Defendants; and
- 7 (d) That Treasury, HUD and NACA each disavow any
8 relationship with the HOPE Defendants.

9 (6) Furthermore, the balance of equities supports the requested relief for
10 two reasons:

11 i. Because most victims lose one or more entire mortgage
12 payments, their interest in redress is extremely substantial. Additionally:

13 (a) Threatened foreclosure affects others who reside in the
14 home (such as children), not merely the mortgagor.

15 (b) Victims are already in severe financial distress, and few
16 easily recover. Some have lost their homes, and some have declared bankruptcy.

17 (c) Even victims who retain their homes suffer both out-of-
18 pocket losses as well as penalties, interest and credit damage associated with their
19 missed payments.

20 ii. The likelihood that the HOPE Defendants will dissipate or
21 conceal assets is extremely substantial, whereas the likelihood
22 that the HOPE Defendants would comply with an order to
23 preserve assets and evidence is effectively zero.

24 (a) Defendant Pacios exerts control over the HOPE
25 Defendants’ operation (“HOPE Services”), and he is
26 already violating a Court order banning him from the
27 loan modification industry.
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1 (b) Fraud permeates HOPE Services. The HOPE Services
2 scam is theft, not a technical regulatory violation.

3 (c) HOPE Services ignored a lawful discovery request from
4 a regulatory agency (the Washington Department of
5 Financial Institutions (“DFI”)) concerning the conduct at
6 issue here.

7 (d) Using aliases, different locations, Fictitious Business
8 Names (“FBNs”), maildrops, and other techniques, the
9 HOPE Defendants go to great lengths to hide themselves.

10 (e) The HOPE Defendants are already dissipating assets
11 through large cash withdrawals and personal
12 expenditures.

13 (7) As the accompanying Memorandum describes more fully, while
14 doing business under multiple names, Defendant Lake substantially assists the
15 HOPE Services’ fraud. The FTC is likely to prevail against Lake because (i) Lake
16 knows (or is consciously indifferent) that HOPE Services violates the Mortgage
17 Assistance Relief Services (“MARS”) Rule’s advance fee ban, and (2) Lake
18 provides HOPE Services with substantial assistance. *See* 12 C.F.R. § 1015.6.

19 (8) Lake knows (or is consciously indifferent) that HOPE Services
20 violates the MARS Rule’s advance fee ban because he knows (or is consciously
21 indifferent) that HOPE Services receives payments from homeowners who do not
22 have a written loan modification agreement with their lender. *See* 12 C.F.R.
23 §1015.5(a).

24 (9) The fact that Lake knows (or is consciously indifferent) that HOPE
25 Services receives payments is apparent because:

- 26 i. Lake and his employees communicate with homeowners about
27 their payments;
28

- 1 ii. Copies of one victim's payments were attached to a complaint
- 2 that Lake answered; and
- 3 iii. HOPE Services pays Lake, and even if one assumes that Lake
- 4 believes HOPE Services is paying him to prove homeowners
- 5 with amorphous "advocacy" services they marketed to
- 6 homeowners, Lake still knows (or is consciously indifferent)
- 7 that homeowners have made payments for loan modification
- 8 assistance.

9 (10) The fact that Lake knows (or is consciously indifferent) that the
10 homeowners HOPE Services refers to him do not have written modification
11 agreements with their lenders is apparent because:

- 12 i. Lake's "advocacy services" ostensibly aim to help homeowners
- 13 obtain or finalize modifications;
- 14 ii. Homeowners' have informed Lake that they do not have
- 15 modifications, and Lake has given those homeowners advice
- 16 that reflects his understanding that they do not have
- 17 modifications; and
- 18 iii. Lake and his employees communicate with victims' lenders,
- 19 and any material degree of communications with victims'
- 20 lenders would disclose that HOPE Services' victims do not
- 21 have loan modifications.

22 (11) Although Lake knows (or is consciously indifferent) that HOPE
23 Services violates the advance fee ban, he provides HOPE Services with substantial
24 assistance. Most important, this assistance includes managing lender
25 communications, thereby making it substantially more likely that victims will
26 make additional payments that HOPE Services can steal. If homeowners
27 communicate with their lenders directly, they would be very likely to learn that
28

1 their lender has not received their trial payments (and has no relationship with
2 HOPE Services). However, by interposing himself between homeowners and their
3 lenders, Lake filters information that would expose Hope Services' fraud. Despite
4 reviewing dozens of complaints and speaking directly with more than thirty
5 victims, the FTC could not identify any instance in which Lake or his entity
6 disclosed to a homeowner that his lender had not received his trial payments.

7 (12) Additionally, Lake provides further support by helping "explain
8 away" signs that HOPE Services is a fraud, and by reassuring homeowners that the
9 loan modification process is moving forward.

10 (13) The balance of equities supports the relief requested against Lake. As
11 explained above, victims' interest in redress is great. Additionally, the likelihood
12 that Lake will dissipate or conceal assets is extremely substantial, whereas the
13 likelihood that he will comply with an order to preserve assets and evidence is
14 negligible:

- 15 i. Fraud permeates Lake's business because he knows HOPE
16 Services injures victims, but he enables further injury rather
17 than disclosing information that would allow consumers to
18 protect themselves.²
- 19 ii. Lake has made at least two sworn false statements with respect
20 to his activities, including:
 - 21 (a) At least one misrepresentation in a sworn response to a
22 DFI subpoena investigating Lake's loan modification
23 activities;

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25
26 ² Fraud by omission is still fraud. *See, e.g., Mui Ho v. Toyota Motor Corp.*,
27 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013) (identifying elements of fraud by
28 omission claim under California law).

(b) At least one misrepresentation in a state-mandated FBN form, which obscures Lake's role with respect to his loan modification activities.

iii. Lake refused to comply with two DFI subpoenas investigating this loan modification activity.

iv. Lake obscures his role by operating through an unregistered FBN. None of Lake's "clients" deals with a legal entity associated with Lake.

(14) As the accompanying Memorandum describes more fully, Pacios owes the FTC (and victims from an earlier mortgage relief scam) approximately \$1.19 million (plus interest).³ However, to hide his income, instead of paying Pacios directly, HOPE Services pays Pacios' wife (or girlfriend), Relief Defendant Gonsalves.

(15) The FTC is likely to prevail against Relief Defendant Gonsalves because (i) Gonsalves received ill-gotten funds from HOPE Services and (ii) does not have a legitimate claim to those funds. HOPE Services pays Gonsalves thousands of dollars a month, but she has no HOPE Services phone number, she does not appear on any business or legal documents associated with HOPE Services, and no victims report speaking with her. Finally, because Pacios is hiding assets in Gonsalves' name, if Pacios receives notice of this litigation before assets nominally titled in Gonsalves' name are frozen, Pacios is extremely likely to dissipate or conceal those assets.

(16) In short, the FTC is likely to prevail. Because victims' injuries are severe and Defendants are likely to dissipate and conceal assets, the balance of

³ See Final Order, *FTC v. Lakhany*, No. 8:12-cv-337 (Feb. 28, 2013), DE152 at 13.

1 equities favors the requested relief. If the Court does not issue an *ex parte* TRO
2 with an asset freeze, the likelihood that victims recover is very low.

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JONATHAN COHEN
Attorney for Plaintiff
FEDERAL TRADE COMMISSION

Executed on April 10th, 2015 in Washington, D.C.